IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Jasvinder Singh & Anr. Vs. State of Rajasthan
S.B. CR. REVISION PETITION NO.1038/2006

Against order dated 06.10.2006 passed by Addl. Judge (Fast Track), Hanumangarh in Criminal Case No.13/2005.

DATE OF ORDER :: 29th November, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. HSS Kharlia and Mr. S.S. Dhillon for petitioners.
Mr. V.R. Mehta, Pubic Prosecutor for the State.

BY THE COURT:

Against framing of charge for the offence under Sec. 498A and 304B of IPC vide order dated 06.10.2006 passed by the learned Addl. Sessions Judge (Fast Track), Hanumangarh in Criminal Case No.13/2005, the accused petitioners have filed the present revision petition under Sec.397/401 Cr.P.C.

The prosecution case is that on 15.09.1998 when Saroj Bala, hospitalized at Govt. Hospital Hanumangarh in a burnt condition, stated in her statement recorded by the police official that she was married to petitioner Jasvinder about three and a half months back, her husband was pressurizing her for getting a scooter from her parents and used to beat her and was also making demand for bringing cash from her parents. Her mother-in-law also used to taunt her saying that the articles assured to be given in the marriage were not sent even after four months of the marriage. On the day of incident, when his husband went out of the house, he told her that he would not return to the house until the dowry articles were brought by her. She further stated that she caught fire while changing her clothes and thereafter efforts were made to put off the fire and she was brought to the hospital by the mother-in-law. The police after registering a case under Sec.498A IPC, started investigation. Saroj Bala was referred to Jaipur for her treatment and while in transit she expired. The investigating agency, after recording statements of witnesses under Sec.161 Cr.P.C., found that no case under Sec.304B IPC was made out, hence filed chargesheet

against the accused petitioners only under Sec.498A IPC. On an application being moved by Atar Singh, the father of deceased on 02.02.1999 through State for adding offence under Sec.304B IPC against the accused petitioners, it was decided by the Judicial Magistrate 1st Class, Hanumangarh on 25.06.2001 rejecting the prayer.

Aggrieved, the father of deceased Saroj Bala, filed revision petition challenging the order of Magistrate whereby his application to add offence under Sec.304B IPC against accused petitioners was rejected and the learned revisional Court while setting aside the order of the Judicial Magistrate dated 25.06.2001, directed the trial Court to pass order afresh vide its order dated 28.07.2004. Thereafter, the Court of learned Civil Judge (Jr.Div.) & Judicial Magistrate, Hanumangarh vide order dated 15.12.2004 took cognizance against the petitioners for offence under Sec.498A and 304B IPC by a detailed order and on committal the case, it was transferred to the Court of learned Addl. District Judge (Fast Track), Hanumangarh, where after hearing the arguments on charge, charges against the accused petitioners were framed under Sec.498A and 304B IPC. Hence, this revision petition.

The contention of the learned counsel is that the trial Court has committed serious illegality in framing charge under Sec.304B IPC against the accused petitioners as no evidence is available on record to show that petitioners were responsible for the death of deceased. It has also been submitted that during the course of treatment, in her statement deceased Saroj Bala stated that at the time of incident she was alone at the house and while changing her clothes, she caught fire from the chimney and after hearing hue and cry other persons came there, who extinguished the fire. According to the learned counsel, therefore, to say that offence under Sec.304B is made out, is absolutely against the material collected by the Investigating Agency. It has also been submitted that at the initial stage father and mother of the deceased never stated that they had any suspicion in respect of the incident which took place. It has also been submitted that after due deliberation the complaint has been lodged and accused petitioners have been involved in the case.

I have considered the submissions made before me. In the instant case, the learned trial Court while

considering the entire matter, at page 2 of the impugned order, stated as under:

> " इस मामले में जो पर्चा बयान दि. 15.9.98 को लिया गया, उसमें स्पष्ट रूप से मृतका सरोज बाला, जिसकी आयु 18 वर्ष अंकित हैं, ने स्वयं का विवाह 3, साढ़े 3 माह पहले ही होना और स्वयं के पति जसविन्द्रसिंह व स्वयं की सास अवतारकौर द्वारा दहेज की मांग करने के बारे में आरोप लगाया हैं और स्वयं को तंग परेशान करना और मारपीट करने का भी उल्लेख किया गया हैं। घटना वाले रोज दि.15.9.98 को स्वयं का पति सुबह कचहरी जाना और जाते हुए यह कह कर जाना कि पीहर से सामान दहेज नहीं लायेगी, तब तक घर नहीं आऊंगा। इस प्रकार घटना वाले रोज भी मृतका से दहेज की मांग करने का उल्लेख पर्चा बयान में स्पष्ट रूप से आया हैं। घटना दिन के समय की हैं। दिन में कोई स्त्री चिमनी जलाकर कपड़े बदले यह प्रथमदृष्टया विश्वसनीय नहीं हैं और चिमनी की आग से 70 प्रतिशत शरीर जल जाय, यह भी विश्वसनीय प्रतीत नहीं होता। इस मामले में मृतका सरोज बाला का 70 प्रतिशत शरीर जलना अंकित किया गया हैं और मृतका सरोज बाला की माता रेशमा व पिता अतरसिंह के धारा 161 दं.प्र.सं. के बयान इस मामले में हुए हैं, जिसमें यह कहा गया हैं कि सरोज को उसके पति व सास ने डरा रखा था, इसलिए चिमनी से जलने वाली बात बताई थी। बाद में स्वयं ने यह बताया था कि जसविन्द्रसिंह व उसकी माता अवतारकौर ने जलाया हैं। नक्शा मौका व हालात मौका में चुन्नी में मिट्टी के तेल की बदबू आ रही होना और सूट के जले हुए टुकड़े चौबारे के अंदर व बाहर व छत पर बिखरे होना और चौबारे की साईड में एक अधजला पत्र लाल स्याही से लिखा पड़ा होना अंकित किया गया हैं। फर्द सूरतहाल लाश में गर्दन से लेकर दोनों पैरों के गोडों तक पूरा बदन आगे पीछे से जला हुआ होना और दोनों हाथ कलाई तक जगह-जगह से जले हुए होना एवं दोनों बदन के बराबर में सीधे हैं। दोनों हाथों की हथेलियां ऊपर से जली हुई नहीं होना और गोडों से नीचे दोनों पैर जले हुए नहीं होना अंकित हैं।फर्द जब्ती चुन्नी में भी मिट्टी के तेल की बदबू आने का उल्लेख किया हुआ हैं, ऐसी अवस्था में यदि केवल मात्र चिमनी से कपड़े आग पकड़ते तो चुन्नी में मिट्टी के तेल की बदबू आना सम्भव नहीं था। धारा 113 (बी) साक्ष्य अधिनियम में अभिधारणा किये जाने का प्रावधान हैं। विवाह के तीन साढ़े तीन माह के पश्चात् ही ऐसी घटना घटित हुई हैं और जलने से मृतका सरोजबाला की मृत्यु हुई हैं, जो स्वाभाविक मृत्यु नहीं हैं। इस प्रक्रम पर जो साक्ष्य अभिलेख पर हैं तथा धारा 113 (बी) साक्ष्य अधिनियम के तहत जो अभिधारणा का प्रावधान हैं, उसके अनुसार प्रथमदृष्टया धारा 498-ए व 304- बी भा.दं.सं. के आरोप अभियुक्तगण पर लगाये जाने के पर्याप्त आधार हैं।"

A perusal of the reasoning given by the learned trial Court reveals that the material brought on record was prima facie sufficient to frame charge against the accused petitioners as the evidence available in the statements of witnesses is that within 3½ months of marriage, the incident took place, in which body of the deceased was burnt more than 70% and it was not possible to presume that she caught fire from chimney as stated by the accused petitioners. The trial Court found that the material collected from the spot prima facie was not sufficient to believe that the deceased caught fire from chimney. In the facts and circumstances of the case, the trial Court further found that in view of the factum of the incident, which took place within 3½ months of the marriage, and further in view of presumption to be raised under Sec.113-B of the Evidence Act, the accused petitioners were required to be tried for the offences under Sec.498A and 304-B of the IPC.

At the stage of framing charge, prima facie, the courts are required to look into the material collected during the course of investigation and if on the basis of material collected, Court comes to the conclusion that the material

collected is sufficient to frame charge under a particular section then the Court is well within its competence to frame the charges.

It also appears that the trial Court while considering the matter has taken into consideration the plea of the accused petitioners that infact deceased caught fire from a chimney and that plea has been repelled by giving cogent reasons, therefore, in my humble opinion, the trial Court committed no illegality or irregularity while framing charge under Sec.498A and 304B of the IPC with the aid of Sec.113B of the Indian Evidence Act.

In view of foregoing discussions, I do not find any merit in the present revision petitioner and the same deserves to be dismissed summarily.

Accordingly, the revision petition stands dismissed.

(SATYA PRAKASH PATHAK) J.

/jpa